



UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 13

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NOV 24 2003

In re Application of
Mary Romans
Application No. 09/800,870
Filed: March 7, 2001
Title: NON-TRAUMATIC MODEL FOR
NEUROGENIC PAIN

OFFICE OF PETITIONS

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DECISION ON
PETITION

This is in response to the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)," filed October 9, 2003 in the above-identified application. The petition is properly considered under 37 CFR 1.137(b)¹.

The petition under § 1.137(b) is **DISMISSED** without consideration on the merits.

Any renewed petition must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR §1.137(a)" or "Renewed Petition under 37 CFR §1.137(b)," as appropriate. Extensions of time under 37 CFR §1.136(a) are permitted.

The above-identified application became abandoned for failure to file a timely reply to the non-final Office action mailed December 2, 2002. This restriction requirement set forth a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply was filed within this period and no extensions of time under the provisions of 37 CFR § 1.136(a) were obtained. (A late reply was submitted on July 1, 2003). Accordingly, the above-identified application became abandoned on March 3, 2003. A Notice of Abandonment was mailed on July 16, 2003.

Petitioner maintains that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional. To pay the required petition fee, petitioner submits several credit card authorizations; of different dates (many a year old), signed by various persons, and requesting payment of various fees (i.e. partial petition, extension of time). Having reviewed these authorizations, it has been determined that they are not acceptable. Further, the previous payments, petitioner states were faxed to the Office on June 30, 2003 and August 14, 2003 are not of record in this application. (The last payment of record in this application was made in July 2001).

¹ Pro se applicant used form PTO/SB/61, which is for filing petitions to revive based on unavoidable delay. However, petitioner repeatedly states on petition that the delay is unintentional, does not state that they are providing an explanation to show unavoidable delay, and purports to include the fee for consideration under 37 CFR 1.137(b).

35 U.S.C. 41(a) (7) provides that a petition for the revival of an unintentionally abandoned application or for the unintentionally delayed payment of the issue fee must be accompanied by the petition fee set forth in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding of abandonment (i.e., it is determined that the application is not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

In addition, the phrase "[o]n filing" in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

There is no basis for withdrawing the holding of abandonment in this case. As payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of an abandoned application and petitioner has not made such a payment, the petition must be dismissed.

The renewed petition should include:

- a cover letter entitled "renewed petition under § 1.137(b)," with a header identifying the paper as being filed in this application (including the application number, title, date filed, name of inventor, art unit, and name of examiner); and
- payment of the small entity petition fee of \$665.00.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-0309.


Nancy Johnson
Senior Petitions Attorney
Office of Petitions